

Congress of the United States

Washington, DC 20515

March 16, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Pruitt:

As you seek to refocus the Environmental Protection Agency (EPA) on its statutory mandates as well as core missions and programs, we write to bring your attention to a range of issues that are negatively affecting growth and prosperity in Alaska, with little to no commensurate benefit to the environment. We appreciate your engagement on these issues during your confirmation process, and look forward to working with you to address them and other regulatory burdens that are causing harm in our home state.

We greatly appreciate the work you have already done to initiate an overhaul of the agency's "Waters of the United States" regulation, to extend the comment period for a proposed rule that would impose duplicative financial assurances on hardrock mines, and to streamline the permitting process for important energy infrastructure, including the creation of Regulatory Reform Officers.

Clean Drinking Water

The crisis in Flint, Michigan exposed nationwide problems with lead contamination in drinking water. Dozens of water systems in Alaska exceed EPA's lead limits. These elevated lead levels are extremely problematic in our rural communities. For example, the only school in Newtok, a Yup'ik community with about 380 residents, exceeded federal lead limits last year. Safe drinking water for every American, particularly Alaska's rural residents, must be a priority for EPA under your direction. As such, funding key programs that provide grants and loans to municipalities and poorly served rural communities is vital to achieving this priority.

Rural Sanitation

Basic sanitation infrastructure that is taken for granted in much of the United States still presents on-going serious challenges in Alaska. According to the Alaska Department of Environmental Conservation (ADEC), over 30 Alaska communities still lack running water or flushing toilets.

As a result, many Alaskans must use “honey buckets”¹ and “washeterias.”² Last year’s Water Resources Development Act authorized a grant program to help communities without infrastructure obtain first-time access to indoor plumbing and to provide needed assistance for aging and outdated infrastructure in rural Alaskan communities. Without these basic necessities, Alaskans face real and devastating health consequences. ADEC reports that the lack of in-home water and sewer service in rural Alaska causes severe skin infections and respiratory illnesses and that residents of Southwest Alaska suffer rates of invasive pneumococcal disease that are among the highest in the world. During your confirmation hearing you committed to working with Congress to ensure that programs under the EPA’s authority, like the ones passed in last year’s Water Resources Development Act, are funded. We look forward to working with you to bring basic sanitation infrastructure to Alaskans who do not currently have these essential services.

Waters of the United States Rule

The economic harm to Alaska if the last administration’s “Waters of the United States” or “WOTUS” rule is left in place cannot be overstated. This rule broadly defined which waters are subject to regulation under the Clean Water Act. This is deeply problematic for Alaska, which contains over 60 percent of the nation’s jurisdictional waters and approximately 65 percent of the nation’s wetlands. If the WOTUS rule is implemented in its current form, these totals will certainly increase and subject a wide range of economically beneficial activities to onerous regulatory requirements. On February 28, 2017, the President issued an executive order directing EPA and the Army Corps of Engineers to review the rule in line with the policy of “ensur[ing] that the Nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution.”³ We request that EPA continue to review the WOTUS rule and draft a new rule that is faithful to the text of the Clean Water Act and intent of Congress, while appropriately balancing environmental protection with economic growth.

Small Remote Incinerators

EPA’s Federal Plan for Commercial and Industrial Solid Waste Incineration (CISWI) units adversely impacts Alaskan entities that use small remote incinerators (SRIs) to dispose of waste in remote areas where traditional disposal methods are unavailable. EPA’s Plan impacts all remote development in Alaska, including energy and mining, and could also impact tourism and other industries in the future. The very same SRIs that EPA is proposing to ban in rural parts of our state currently operate in National Parks in Alaska and are exempted from the Plan because they are government owned. SRIs with such *de minimus* impact that they are allowed in a National Park should also be permissible in remote parts of our state. The alternative to SRIs is that remote sites will be forced to store their waste, which risks attracting wildlife, and then helicopter or barge the waste out – a far worse impact on the environment than very small

¹ ADEC’s Division of Water notes that many households in rural Alaska use a rudimentary toilet known as a “honey bucket” in which a bucket lined with a plastic bag is used to collect urine and feces. These plastic bags of human waste are then disposed of in sewage lagoons.

² Washeterias are central water points where village residents can access running water for tasks such as bathing and washing clothes.

³ Presidential Executive Order On Restoring The Rule Of Law, Federalism, And Economic Growth By Reviewing The “Waters Of The United States” RULE, 2017 WL 764940, at *1

amounts of incineration. We request that EPA recognize the unique geography and challenges of Alaska and work with us to exempt the state from the SRI requirements in CISWI.

Fish Grinding

Currently, pursuant to EPA's regulations, all onshore Alaska facilities (except those in Kodiak and Dutch Harbor, where there are documented water quality impacts) are permitted to discharge seafood waste after grinding to one-half inch "in all dimensions." However, no available technology guarantees grinding to one-half inch "in all dimensions" 100 percent of the time. The grinders that the seafood plants use are "designed" to grind to one-half inch, but because of the nature of the waste material, it is impossible to always comply with this requirement. It is also our understanding that EPA is considering changing its regulations to require that facilities in certain locations (Ketchikan, Petersburg, Cordova, Anchorage, Sitka and the Kenai Peninsula) screen their waste instead of grinding. This would impose significant additional costs on those facilities, without any documented water quality benefits, and could result in the closing of smaller processors. Although permits for onshore facilities are issued by the State of Alaska, those permits are required to incorporate EPA's regulations. Processing vessels operating in waters offshore of Alaska are subject to the same one-half inch grinding requirement, but there are no documented water quality issues that require such grinding. The delegation looks forward to working with you to find a reasonable, common sense resolution to onshore and offshore fish grinding issues as soon as possible.

PM 2.5

Because of the extreme cold and its location, being surrounded by higher terrain, Fairbanks, Alaska has struggled to meet EPA's air quality standards for particulate matter. Until a reliable supply of natural gas is available to the community, residents will be forced to heat with oil or wood stoves that release small smoke particles. EPA is now proposing penalties on the community under the Clean Air Act for noncompliance. We respectfully request that EPA work with us to improve air quality in Fairbanks through mechanisms like the Targeted Airshed Grants program and that the Agency delay those penalties because of the extraordinary circumstances confronting Fairbanks.

Preemptive/Retroactive Permit Vetoes

Alaska is blessed with an almost unparalleled abundance of natural resources. Our state has successfully balanced resource development with environmental stewardship for decades, but regulatory stability is critical to drawing private investment. As such, the delegation respectfully requests that the EPA reverse its recent pattern of preemptive and retroactive vetoes and instead commit to following the permitting processes as specified in law. Both preemptive and retroactive vetoes undermine the reliability and fairness of the permitting process, which exists to ensure due process. The permitting process is designed to fully vet issues by providing applicants with the opportunity to make their case and allowing relevant agencies to review potential issues. Discontinuing the use of preemptive and retroactive vetoes would not impinge on EPA's authority to veto projects *within* the permitting process, when merited, after review of environmental impacts and scientific records. However, it would avoid prejudgments and provide needed regulatory certainty for applicants as they look to invest in our state.

Clean Power Plan

The previous administration agreed to exempt Alaska from the final "Clean Power Plan" due to the lack of applicable data and the recognition of the unique circumstances faced by our state. As

you consider the future of this sweeping regulatory regime, it is paramount that Alaska remain exempt. One-size-fits-all standards do not work in Alaska, because only a small portion of our state, the Railbelt region, has an electric grid. Much of Alaska relies on village-scale microgrids powered by diesel generators, and no standard developed for the interconnected grid of the contiguous states could ever properly be applied to Alaska.

CERCLA 108(b)

EPA's proposed rule "Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry," is redundant and unnecessary. There are already well-established, modern financial assurance requirements in place at both the state and federal levels. The U.S. Small Business Administration Office of Advocacy has strongly recommended that EPA withdraw its proposed rule. The Bureau of Land Management and the U.S. Forest Service have also expressed concerns with its infringement into their respective jurisdictions and its duplicative nature. The delegation requests that you closely review the proposed rule and consider requesting an extension of the court-ordered deadline if necessary. As noted previously, we appreciate that you have already extended the comment period for this complex and highly technical proposal, and are eager to work with you to ensure that federal regulations do not further weaken our nation's mineral security.

Thank you for your consideration of the many challenges facing our state. We urge you to reject the top-down, paternalistic approach that marked EPA's approach in Alaska in the last administration and ask you to avoid the layering of overlapping and duplicative rules that serve primarily to undermine Alaskans' ability to provide for their families. We welcome your leadership and look forward to working with you and with the new administration to address these and related issues.

Sincerely,

		
Lisa Murkowski United States Senator	Dan Sullivan United States Senator	Don Young Congressman for All Alaska